

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

3 **Melissa Morrison,**

4 Plaintiff,

6 **v.**

7 **Spherion Staffing, LLC,**

8 Defendant.

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Civil Action No.

Jury Trial Demanded

11 **COMPLAINT**

12 **Melissa Morrison** (Plaintiff), by and through her attorneys, **The Law Firm**
13 **of Mitch Luxenburg**, alleges the following against **Spherion Staffing, LLC**
14 (Defendant):

16 **INTRODUCTION**

17 1. Plaintiff's Complaint is based on the Telephone Consumer Protection
18 Act ("TCPA"), 47 U.S.C. §227, *et seq.*.

20 **JURISDICTION AND VENUE**

21 2. This Court has subject-matter jurisdiction over the TCPA claims in
22 this action under 28 U.S.C. § 1331, which grants this court original jurisdiction of
23 all civil actions arising under the laws of the United States. See Mims v. Arrow
24 Fin. Servs., LLC, 565 U.S. 368, 386-87 (2012) (confirming that 28 U.S.C. § 1331
25

1 grants the United States district courts federal-question subject-matter jurisdiction
2 to hear private civil suits under the TCPA).

3 3. This Court has personal jurisdiction over Defendant because
4 Defendant regularly conducts business in the State of North Carolina and because
5 the occurrences from which Plaintiff's cause of action arises took place and
6 caused Plaintiff to suffer injury in the State of North Carolina.
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8 4. Venue is proper under 28 U.S.C. § 1391 (b)(2).
9

10 **PARTIES**

11 5. Plaintiff is a natural person residing in Maiden, North Carolina
12 28650.

13 6. Plaintiff is a "person" as that term is defined by 47 U.S.C. § 153(39).
14

15 7. Defendant is a business entity with principal place of business, head
16 office, or otherwise valid mailing address at 3625 Cumberland Boulevard SE,
17 Atlanta, Georgia 30339.

18 8. Defendant is a "person" as that term is defined by 47 U.S.C. §
19 153(39).
20

21 9. Defendant acted through its agents, employees, officers, members,
22 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
23 representatives, and/or insurers.
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FACTUAL ALLEGATIONS

10. Plaintiff has a cellular telephone number ending in 8045.

11. The area code for the number ending in 8045 is 828.

12. Area code 828 is an area code used in western part of North Carolina.

13. Plaintiff has only used this cellular telephone number for residential purposes.

14. Defendant sent text messages to Plaintiff on her cellular telephone number beginning in or around December of 2020 for the purpose of soliciting job staffing services.

15. Defendant did not have Plaintiff's consent to text her on her cellular telephone number.

16. Plaintiff did not request information from Defendant regarding job staffing services.

17. Plaintiff requested Defendant to stop sending text messages to her on or about December of 2020.

18. However, the text messages continued.

19. Plaintiff's telephone number ending in 8045 has been on the Do Not Call Registry since November of 2018.

1 20. Upon information and belief, when contacting Plaintiff, Defendant
2 used a dialing system which had the capacity to store or call phone numbers using
3 a random or sequential number generator.

4 21. Upon information and belief, Defendant maintains a stored list of 10
5 digit telephone numbers of consumers in its database for communication
6 purposes.
7

8 22. Upon information and belief, Defendant utilize a “predictive dialing
9 system” which interfaces with software and databases which have the capacity to
10 generate numbers randomly or sequentially.
11

12 23. The dialing system used by Defendant can text/call phone numbers
13 stored in those databases.
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15 24. Accordingly, Defendant’s dialing systems have the capacity to dial
16 numbers using a random or sequential number generator.

17 25. Upon information and belief, Defendant’s dialing systems include
18 equipment which dials from the stored list of 10 digit consumer telephone
19 numbers.
20

21 26. Defendant’s dialing systems employ computer code and/or
22 algorithms which result in it randomly or sequentially generating numbers in
23 order to select and dial the stored 10-digit consumer telephone number from the
24 list.
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1 27. Furthermore, Defendant's dialing systems use computer code and/or
2 algorithms to determine the orders/sequence of calls to be automatically dialed.

3 28. The operation of the random/sequential number generator, referred to
4 above results in Defendant's dialing system automatically placing calls and
5 sending text messages to the 10 digit telephone numbers in Defendant's stored
6 list(s).
7

8 29. Plaintiff believes and avers that Defendant texted her with an
9 automatic telephone dialing system.
10

11 30. While Plaintiff has not had the benefit of discovery, she intends to
12 prove Defendant utilized an automatic telephone dialing system in the course of
13 discovery.
14

15 31. Defendant's text messages were not made for "emergency purposes"
16 but rather were to solicit job staffing services.

17 32. Plaintiff found Defendant's repeated calls annoying, frustrating,
18 upsetting, harassing, and an invasion of her privacy.
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20 33. Upon information and belief, Defendants conduct business in a
21 manner which violates the Telephone Consumer Protection Act.

22 **COUNT I**
23 **DEFENDANT VIOLATED THE TCPA 47 U.S.C. §227(b)**

24 34. Plaintiff incorporates the forgoing paragraphs as though the same
25 were set forth at length herein.

1 35. The TCPA prohibits placing calls using an automatic telephone
2 dialing system or automatically generated or prerecorded voice to a cellular
3 telephone except where the caller has the prior express consent of the called party
4 to make such calls or where the call is made for emergency purposes. 47 U.S.C. §
5 227(b)(1)(A)(iii).
6

7 36. Federal Communications Commission (FCC) reasonably interpreted
8 TCPA to prohibit any call, including both voice and text call, using automatic
9 telephone dialing system (ATDS) or artificial or prerecorded message to any
10 wireless telephone number, and thus, “call” within meaning of TCPA included
11 text message to consumers' cellular telephones by publisher and mobile marketing
12 firm to advertise publication of novel. Telephone Consumer Protection Act of
13 1991, § 3(a), 47 U.S.C.A. § 227(b)(1)(A)(iii). Satterfield v. Simon & Schuster,
14 Inc., 569 F.3d 946 (9th Cir. 2009).
15
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17 23. Defendant sent multiple text messages to Plaintiff's cellular
18 telephone number using an automatic telephone dialing system.
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20 24. The dialing system used by Defendant to call Plaintiff's cellular
21 telephone calls telephone numbers without being prompted by human intervention
22 before each call.
23

24 25. The dialing system used by Defendant to call Plaintiff has the present
25 and/or future capacity to dial numbers in a random and/or sequential fashion.

26. Defendant's text message were not made for "emergency purposes."

27. Defendant's text messages to Plaintiff's cellular telephone were without any prior express consent.

28. Defendant contacted Plaintiff despite the fact that Plaintiff has been on the Do Not Call Registry since November of 2018.

29. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

30. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

31. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and treble damages.

COUNT II
DEFENDANT VIOLATED THE TCPA 47 U.S.C. § 227(c)

32. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

33. The TCPA prohibits any person or entity of initiating any telephone solicitation to a residential telephone subscriber who has registered their telephone number on the National Do-Not-Call Registry of persons who do not wish to

1 receive telephone solicitations that is maintained by the Federal Government. 47
2 U.S.C. § 227(c).

3 34. Defendant contacted Plaintiff despite the fact that Plaintiff has been
4 on the Do Not Call Registry since November of 2018.

5
6 35. Defendant called Plaintiff on multiple occasions during a single
7 calendar year despite Plaintiff's registration on the Do Not Call list.

8 36. Defendant's acts as described above were done with malicious,
9 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
10 under the law and with the purpose of harassing Plaintiff.

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12 37. The acts and/or omissions of Defendant were done unfairly,
13 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
14 lawful right, legal defense, legal justification or legal excuse.

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16 38. As a result of the above violations of the TCPA, Plaintiff has suffered
17 the losses and damages as set forth above entitling Plaintiff to an award of
18 statutory, actual and trebles damages.

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20 **Wherefore, Plaintiff, Melissa Morrison, respectfully prays for judgment**
21 **as follows:**

- 22 a. All actual damages Plaintiff suffered (as provided under 47
23 U.S.C. § 227(b)(3)(A));
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- 1 b. Statutory damages of \$500.00 per violative telephone call (as
2 provided under 47 U.S.C. § 227(b)(3)(B));
- 3 c. Additional statutory damages of \$500.00 per violative
4 telephone call (as provided under 47 U.S.C. § 227(C);
- 5 d. Treble damages of \$1,500.00 per violative telephone call (as
6 provided under 47 U.S.C. § 227(b)(3));
- 7 e. Additional treble damages of \$1,500.00 per violative telephone
8 call (as provided under 47 U.S.C. § 227(c);
- 9 f. Injunctive relief (as provided under 47 U.S.C. § 227(b)(3) and
10 (c); and
- 11 g. Any other relief this Honorable Court deems appropriate.
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16 **DEMAND FOR JURY TRIAL**

17 **Please take notice** that Plaintiff, **Melissa Morrison**, demands a jury trial in
18 this case.

19

20 Respectfully submitted,

21 Dated: 06/04/2021

22 By: /s/ Mitch Luxenburg
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